IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8667 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTLAL JOITANDAS PATEL

Versus

UNION OF INDIA

Appearance:

MR CN TRIVEDI for Petitioner No. 1

MR AK CLERK for Respondent No. 1,4

RULE SERVED BY DS for Respondent No. 2-3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 19/09/2002

ORAL JUDGEMENT

1. The present petition is one filed under Article 226 of the Constitution of India by the petitioner herein, invoking the jurisdiction of this Court for the purpose of protecting the fundamental rights guaranteed under Article 14 and 16 of the Constitution.

2. At the outset, I may state that I have heard learned counsel on the merits of the matter at length, and also in depth. Suffice it to state that it is not necessary to enter into a detailed discussion of facts as brought out on the record of the present petition inasmuch as it would necessarily require adverse comments upon the approach and attitude of the officers of the respondent Corporation, and perhaps the attitude of the petitioner himself.

3. As result of the hearing and discussion, it appears to the Court that the only possible relief which can be granted to the petitioner is the relief at paragraph 26 (I) [introduced by amendment under an order of this Court dated 22nd April 1999].

4. The relief prayed in paragraph 26 (I) is to the effect that the respondent Corporation be directed to grant Compassionate Allowance. The Court is conscious of the fact that the Court has the power to issue a direction to the respondent Corporation that the petitioner shall be granted Compassionate Allowance. However, the Court chooses not to exercise this power for the simple reason that the grant of Compassionate Allowance is a discretionary power vested in the respondent Corporation by virtue of Rule 33 of the Life Insurance Corporation of India [Employees] Pension Rules, 1995. Although the Court has the power to issue a mandatory direction, it would not be appropriate for the Court to cut across the discretion granted to the respondent Corporation under the statute.

5. In the premises aforesaid, without entering into a discussion in the present judgment as regards the merits of the matter, it is directed that the respondent Corporation shall consider the case of the petitioner for grant of Compassionate Allowance. It goes without saying that when the employer takes up this case for consideration, it should not lose sight of the fact that the grant of Compassionate Allowance necessarily requires the adoption of an approach and attitude which is 'compassionate'. This aspect is required to be stated here for the simple reason that on the examination of the material on record, it would appear that had the respondent Corporation and its officers adopted a positive and constructive approach to the entire matter, perhaps this petition would not have been necessary. It is further directed that in case the respondent Corporation considers it necessary that a formal application is necessary for consideration of the grant of Compassionate Allowance, the present petition as also

the present order shall be regarded as such.

6. It is, therefore, directed that the respondent Corporation shall consider the case of the petitioner for grant of Compassionate Allowance under the aforesaid Rules, and take a decision thereon as expeditiously as possible, and preferably within three months from today, after hearing the petitioner.

7. Accordingly, rule is made partly absolute to the extent stated above, with no orders as to costs.

(Y.B. BHATT, J.)
mathew